Assessment Year 1989-90

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Income Tax Appeal No. 74 of 2001
(Old No. 361 of 2000)

The Commissioner of Income Tax,
Meerut and another ……. Applicants

Versus

M/s Hughes Services (Far East) Pvt. Ltd.,
As agent of Mr. Passos FJB.,
Dehradun. …… Respondent

Mr. S.K. Posti, Advocate for appellants.
Mr. V.K. Bist, Advocate for the respondent.

Coram: Hon'ble P.C. Verma, A.C.J.
Hon'ble Rajesh Tandon, J.

Dated: 30.12.2003:

PC:

The matter is squarely covered by our decision dated 9th October 2003 in Income Tax Act Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex International Drilling Co. Ltd.

The questions raised before us are as follows:-

QUESTIONS:

1. Whether on the facts and circumstances of the case the Ld. ITAT was Legally justified in holding that free boarding and lodging facilities provided by the employer on board the rig in high seas cannot be construed to be perquisite?
2. Whether on the facts and circumstances of the case, the Ld. ITAT was legally justified in holding that interest u/s 234-B of the IT Act cannot be charged since the entire income of the assessee was subject to TDS whereas this interest is

chargeable on assessed tax as defined by Explanation I below section 234-B?

In our decision dated 9th October 2003 in Income Tax Act Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex International Drilling Co. Ltd., the reasoning regarding question No.1 is as under:

> "In this case, assessee had to work on the rig. It was hazardous, arduous and continuous. Under such circumstances free food and beverages is a necessity. It is not a luxury. It is not a perquisite. Its value cannot be added to the income of the assessee."

The reasoning regarding question No.2 is as under:

> "In this connection it is important to note that section 234B imposes interest, which is compensatory in nature and not as a penalty (See Union Home Products Vs Union of India reported in 215-ITR-758 at page 766). Secondly, although section 191 of the Act is not over-ridden by sections 192, 208 & 209(1)(a)(d) of the Act, the scheme of sections 208 & 209 of the Act indicates that in order to compute advance tax the assessee has to interalia estimate his current income and calculate the tax on such income by applying the rates in force. That u/s209(1)(d) the income-tax calculated is to be reduced by the amount of tax which would be deductible at source or collectible at source, which in this case has not been done by the employer company according to the law prevailing for which the assessee cannot be faulted. As stated above at the relevant time there were conflicting decisions of the Tribunal. A bonafide dispute was pending. The assessee had to estimate his current income. The words used u/s 209(1)(a) makes the Assessee estimate his current income and since a bonafide dispute was pending, imposition of interest u/s 234B was not justified without hearing and without reasons. Accordingly, we answer this question in the affirmative i.e. in favour of the assessee and against the department."

For the reasons aforesaid, we answer both the above questions in the affirmative i.e. in favour of the assessee and against the department.

Appeal disposed of. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

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